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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,490	02/25/2004	Edgar B. Cahoon	BB1168 US DIV	3572

23906 7590 10/11/2006

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EXAMINER
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MCELWAIN, ELIZABETH F

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/786,490	<b>Applicant(s)</b> CAHOON ET AL.	
	<b>Examiner</b> Elizabeth F. McElwain	<b>Art Unit</b> 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claim 1, to the extent the claims is drawn to an isolated nucleic acid encoding an amino acid sequence related to SEQ ID NO: 2, classified in class 536, subclass 23.1.
  - II. Claim 1, to the extent the claims is drawn to an isolated nucleic acid encoding an amino acid sequence related to SEQ ID NO: 4, classified in class 536, subclass 23.1.
  - III. Claim 1, to the extent the claims is drawn to an isolated nucleic acid encoding an amino acid sequence related to SEQ ID NO: 6, classified in class 536, subclass 23.1.
  - IV. Claim 1, to the extent the claims is drawn to an isolated nucleic acid encoding an amino acid sequence related to SEQ ID NO: 8, classified in class 536, subclass 23.1.
  - V. Claim 1, to the extent the claims is drawn to an isolated nucleic acid encoding an amino acid sequence related to SEQ ID NO: 10, classified in class 536, subclass 23.1.
  - VI. Claim 1, to the extent the claims is drawn to an isolated nucleic acid encoding an amino acid sequence related to SEQ ID NO: 12, classified in class 536, subclass 23.1.

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- VII. Claim 1, to the extent the claims is drawn to an isolated nucleic acid encoding an amino acid sequence related to SEQ ID NO: 14, classified in class 536, subclass 23.1.
- VIII. Claim 1, to the extent the claims is drawn to an isolated nucleic acid encoding an amino acid sequence related to SEQ ID NO: 16, classified in class 536, subclass 23.1.
- IX. Claim 1, to the extent the claims is drawn to an isolated nucleic acid encoding an amino acid sequence related to SEQ ID NO: 18, classified in class 536, subclass 23.1.
- X. Claim 1, to the extent the claims is drawn to an isolated nucleic acid encoding an amino acid sequence related to SEQ ID NO: 20, classified in class 536, subclass 23.1.
- XI. Claims 2-11 and 16, drawn to a nucleic acid, vector, host cell and method of transforming a host cell, classified in class 435, subclass 252.3.
- XII. Claims 2-9, 12-14 and 17, drawn to a nucleic acid, vector, host cell and method of transforming a host cell, classified in class 800, subclass 281.
- XIII. Claim 15, drawn to a method of isolating a polypeptide having triacylglycerol activity, classified in class 435, subclass 70.1.

The inventions are distinct, each from the other because of the following reasons:

The Inventions of Groups I-X are distinct products. Applicants are reminded that nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute

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**independent and distinct** inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq.

Inventions I-X and Inventions XI-XIII are each related as product and process of use one to each of the others. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the products of each of Inventions I-X can be used in different methods, as exemplified by the different methods of Groups XI-XIII.

The methods of Groups XI-XIII are different inventions wherein each is a different method using different method steps and resulting in different products.

1. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and the requirement for different searches, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the


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currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth F. McElwain whose telephone number is (571) 272-0802. The examiner can normally be reached on increased flex time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elizabeth F. McElwain  
Ph.D. Level Examiner  
Art Unit 1638

EFM